

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GERALD L. TUCKER,

Plaintiff,

v.

DEPARTMENT OF CORRECTION, et
al.,

Defendants.

Case No.: 16-CV-1846 JLS (PCL)

**ORDER: DENYING MOTION TO
PROCEED IN FORMA PAUPERIS
AND DISMISSING ACTION
WITHOUT PREJUDICE**

(ECF No. 9)

Plaintiff Gerald L. Tucker, currently incarcerated at the Richard J. Donovan Correctional Facility located in San Diego, California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. (Compl., ECF No. 1.) Plaintiff has not prepaid the civil filing fee required by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed *In Forma Pauperis* (IFP) pursuant to 28 U.S.C. § 1915(a). (IFP Mot., ECF No. 9.)

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$400. *See* 28 U.S.C. § 1914(a). An action may proceed despite the plaintiff's failure to prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the plaintiff is a prisoner and he is granted leave to proceed IFP, he nevertheless remains

1 obligated to pay the entire fee in “increments,” *Williams v. Paramo*, 775 F.3d 1182, 1185
 2 (9th Cir. 2015), regardless of whether his action is ultimately dismissed, *see* 28 U.S.C.
 3 § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002). A prisoner is
 4 defined as “any person” who at the time of filing is “incarcerated or detained in any facility
 5 who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of
 6 criminal law or the terms or conditions of parole, probation, pretrial release, or diversionary
 7 program.” 28 U.S.C. § 1915(h); *Taylor*, 281 F.3d at 847.

8 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act (“PLRA”),
 9 a prisoner seeking leave to proceed IFP must also submit a “certified copy of the trust fund
 10 account statement (or institutional equivalent) for . . . the six-month period immediately
 11 preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d
 12 1113, 1119 (9th Cir. 2005). From the certified trust account statement, the Court assesses
 13 an initial payment of 20% of (a) the average monthly deposits in the account for the past
 14 six months, or (b) the average monthly balance in the account for the past six months,
 15 whichever is greater, unless the prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1); *Taylor*,
 16 281 F.3d at 850. The institution having custody of the prisoner then collects subsequent
 17 payments, assessed at 20% of the preceding month’s income, in any month in which the
 18 prisoner’s account exceeds \$10, and forwards them to the Court until the entire filing fee
 19 is paid. *See* 28 U.S.C. § 1915(b)(2).

20 While Plaintiff has filed an IFP Motion pursuant to 28 U.S.C. § 1915(a), he has not
 21 attached a certified copy of his trust account statements, or an institutional equivalent, for
 22 the 6-month period immediately preceding the filing of his Complaint. *See* 28 U.S.C.
 23 § 1915(a)(2); Civ. L.R. 3.2. Section 1915(a)(2) clearly requires that prisoners “seeking to
 24 bring a civil action . . . without prepayment of fees . . . *shall* submit a certified copy of the
 25 trust fund account statement (or institutional equivalent) . . . for the 6-month period
 26 immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2) (emphasis
 27 added).

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1 Without Plaintiff's trust account statement, the Court is unable to assess the
2 appropriate amount of the initial filing fee which is statutorily required to initiate the
3 prosecution of this action. *See* 28 U.S.C. § 1915(b)(1).

4 **CONCLUSION**

5 For these reasons, **IT IS ORDERED** that:

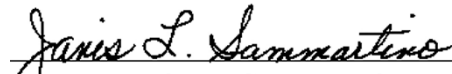
6 (1) Plaintiff's IFP Motion (ECF No. 9) is **DENIED** and the action is
7 **DISMISSED WITHOUT PREJUDICE** for failure to prepay the \$400 filing fee required
8 by 28 U.S.C. § 1914(a).

9 (2) Plaintiff is **GRANTED** forty-five (45) days from the date of this Order in
10 which to re-open his case by either: (1) paying the entire \$400 statutory and administrative
11 filing fee, or (2) filing a new IFP Motion that includes a certified copy of his trust account
12 statement for the six-month period preceding the filing of his Complaint pursuant to 28
13 U.S.C. § 1915(a)(2) and Civil Local Rule 3.2(b).

14 (3) The Clerk of the Court is **DIRECTED** to provide Plaintiff with a Court-
15 approved form "Motion and Declaration in Support of Motion to Proceed IFP" in this
16 matter. If Plaintiff neither pays the \$400 filing fee in full nor sufficiently completes and
17 files the attached IFP Motion, together with a certified copy of his trust account statement,
18 within forty-five days, this action shall remain dismissed without prejudice pursuant to
19 28 U.S.C. § 1914(a) and without further Order of the Court.

20 **IT IS SO ORDERED.**

21
22 Dated: September 9, 2016


Hon. Janis L. Sammartino
United States District Judge